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ALEXANDER L. STEVAS,
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No. 84-1299

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

RAMIRO ARANGO

vs.

THE STATE OF FLORIDA

ON APPEAL FROM AN ORDER GIVEN BY THE FLORIDA THIRD DISTRICT COURT OF APPEALS

REHEARING ON THE JURISDICTIONAL STATEMENT BY THE APPELLANT

MIGUEL SAN PEDRO, ESQ.
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CERTIFICATE

Miguel San Pedro, attorney for Petitioner herein hereby certify that this Petition for Rehearing is restricted to the review of violations of the Petitioners' Constitutional guarantees of due process and equal protection of the laws as enumerated by the fifth and fourteenth amendments to the United States Constitution both prior to and after judgment had been taken against them.

This petition for Rehearing is presented in good faith and not for purposes of delay, but only so justice may be done.

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Subscribed and sworn to before me, at Miami, Florida, this 2nd day of May, 1985.

QUESTIONS PRESENTED

1. The State Jurisdiction in this case was exhausted.

2. The violation to the federal principles of due process and equal protection of the laws was brought to the attention of the state courts.

3. The violation of the federal principles of due process and equal protection of the laws comes from the present enforcement of Florida Statute 454.23 impliedly superseaded by Art. 5 Section 15 of 1968 Florida Constitution.

4. Florida Statute 454.23 by itself is against the federal principle of due process, for vagueness and lack of proper title.

TABLE OF CONTENTS

Page

Good Faith Certificate 1
Table of Authorities 4
I. The State Remedies are Exhausted. 6
II. The violation of Federal Principles was clearly invoked at the State Jurisdiction. 6
III. Nature of the violation to the Federal Principles 6
IV. A similar case was never entertained by this Jurisdiction 7
V. Statutory Jurisdiction conferring Jurisdiction to this Court 7
VI. Cases sustaining this Court's Jurisdiction. 8

CONCLUSION 10

CERTIFICATE OF SERVICE. 11

TABLE OF AUTHORITIES

Page

BROAD RIVER POWER CO. v. STATE OF SOUTH CAROLINA ex rel. Daniel 1930, 50 S.Ct. 101, 281 US 537 8

CORN PRODUCTS REFINING CO. v. EDDY, 1919 39 S.Ct. 325, 249 U.S. 427, 63 L.Ed. 689 8

HERNDON v. LOWRY GA 1937, 57 S.Ct 732, 301 US 242, 81 L.Ed. 1066. 8

MC NABB v US Tenn. 1943, 63 S.Ct. 608, 318 US 322, 87 L.Ed. 819, rehearing denied 63 S. Ct. 1322, 319 US 784. 87 L.Ed. 1727 9

MILLER v. SCHOENE, Va 1928, 48 S.Ct. 246, 276 U.S. 272, 71 L. Ed. 568 8

NEAR v. STATE OF MINNESOTA, 1931, 51 S. Ct. 625, 283 U.S. 697, 75 L. Ed. 1357 8

RECONSTRUCTION FINANCE CORP. v. BEAVER COUNTY, PA. 1946, 66 S. Ct. 902; 328 U.S. 204; 90 L. Ed. 1172 8

SUPREME LODGE, ETC v. KNIGHTS OF PYTHIAS OF NORTH AMERICA, ETC.
1912, 59 So. 88; 102 Miss. 280 9

WINTERS v. PEOPLE OF STATE OF N.Y. N.Y.
1948, 58 S. Ct. 665; 333 U.S. 507; 92 L.Ed.840 8

STATUTE AND RULES:
Florida Statute 454.23
1968 Constitution of Florida, Art. 4, Section 15
The Florida Bar Integration Rules, Art. 16
U.S. Constitution Fourteenth Amendment
U.S. Codes Title 28 Sections 1257 and 2101 to 2106

COMES NOW the Appellant and moves this Honorable Court for a Rehearing reconsidering its denial of Jurisdiction grounding its petition as follows:

I. The State remedies are exhausted:

The Florida 11th Circuit Court sentence was appealled to the Florida 3rd District Court of Appeals that affirmed "per curiam" without opinion the Lower Court sentencing.

The Appellant presented to the Lower Court a motion under the Rule 3.850 (Florida Rules of Criminal Procedure) for post conviction relief that was denied. This denial was appealled to the Florida 3rd District Court and also affirmed "per curiam" without opinion.

The Florida Third Disctrict Court of Appeals is the State Court of last resort for the case, the U.S. Supreme Court's Appellate Jurisdiction is properly invoked to deal with this Appeal.

II. The violation to Federal principles was clearly invoked at the State Jurisdiction.

At Appellant's motion in the Florida 11th Circuit Court for post conviction relief under FRCP, Rule 3.850 and later in the Appeal to the Florida 3rd Dictrict Court of Appeals the violation to the Federal principles of due process and equal protection of the laws was clearly alleged grounding the next step in search of relief invoking the jurisdiction of this U.S. Supreme Court.

III. Nature of the violation to the federal principles:

1) The "unauthorized practice of law" conduct is corrected in the State of Florida by two different and contradictory legal systems:

a) One created by the legislative in 1925 with the Florida Statute 454.23.

In this statute the violation was considered a misdemeanor of the first degree punishable as provided in F.S. 775.082 and 775.083 with a maximum of one year imprisonment.

The criminal procedure to be followed was given by the Florida Rules of Criminal Procedure and the legal forums to know the cases were the State Courts.

b) In 1968 the new Florida Constitution was enacted and by its Art. 5 section 15 the regulation of the practice of law

was considered the exclusive province of the Florida Supreme Court.

By this disposition impliedly the F.S. 454.23 was superseaded as done by the legislative. Impliedly a new system was born under the Florida Supreme Court, constitutionally repealling the old one, for inconsistency with the new State Constitution. The Florida Rules of Criminal Procedure were also repealed for the referred correction and the Florida Supreme Court enacted the Rule 16 of the Florida Bar Integration Rules and created its "Unauthorized Practice of Law Committee" dealing with all matters concerning the unauthorized conduct and procedure for its correction. From this moment the exclusive forum to know about these corrections was the State Supreme Court.

The violation to the Federal due process and equal protection of the laws came from the fact that both legal systems for identical correction were left effective to be applied together and simultaneously and the Courts did not exclude the old system created by the legislative with the F.S. 454.23 as was the clear itention of the 1968 Florida Constitution.

2. The Florida Statute 454.23 violates also the federal principles of due process and equal protection of the laws as follows:

a) The title of the statute is "Penalties" not giving a fair idea or reasonable indication of the general subject of the Statute. b) The Conduct intended to be corrected by the statute, the "practice of law without license" is not defined, breaking the Constitutional principle of giving knowledge for the best understanding of the citizens of the Conduct to be corrected by the Statute, c) The statute is vague. This Statute was enected in 1925 when The Florida Bar did not exist, nearly 60 years ago.

IV. A similar case was never entertained by this Jurisdiction and it is in the best interest of Justice to clarify and decide the uncongruencies of the existing situation.

The State Courts decided this case all the way without giving any opinion at any stage of their jurisdiction.

Our Federal system and the principles of federalism provided this Honorable Court's jurisdiction to assist the citizens in cases like the present one where the State Jurisdiction imposes arbitrarily penalties to the citizens in violation of the federal principles of due process and equal protection of the laws.

V. The Statutory provisions conferring jurisdiction to this Court: Title 28 USC Sections 1257 and 2101 to 2106.

VI. Cases sustaining this Court's Jurisdiction:

Whether state court denied to rights asserted under local law protection guaranteed by Federal Constitution is question on which United States Supreme Court's judgment may be invoked. Broad River Power Co. v. State of South Carolina ex rel. Daniel, 1930, 50 S.Ct. 401, 281 US. 537, 74 L. Ed. 1023, rehearing afrirmed 51 S.Ct. 94,282 U.S. 187,75 L. Ed. 287.

Supreme Court, in passing on constitutional questions, regards substance, and statute attacked must be tested by operation and effect. Near v. State of Minnesota, 1831,51 S.Ct. 625,283 U.S. 697,78 L.Ed. 1357.

The Supreme Court had jurisdiction of appeal from highest state court, where appeal challenged validity of state statute and raised a substantial federal question as to whether state statute conflicted with federal statute. Reconstruction Finance Corp. v. Beaver County, Pa. 1946,66 S.Ct. 992,328 U.S. 204,90 L. Ed. 1172.

Where highest court of state determined that state statute did not violate U.S.C.A. Const. Amend. 14,1. United States Supreme Court had jurisdiction on appeal. Winters v. People of State of N.Y. N.Y. 1948, 68 S.Ct. 556,333 U.S. 507,92 L.Ed. 840.

The scope of a habeas corpus proceeding brought in a state court by one convicted in the courts of such state is a state and not a federal question, and where the state court treated the proceeding as properly raising issues of federal constitutional rights, United States Supreme Court has jurisdiction and such issues are open there. Herndon v Lowry, Ga. 1937, 57 S. Ct. 732, 301 U.S. 242,81 L. Ed. 1066.

Where state statute was challenged in state court under due process clause of U.S.C.A. Const. Amend. 14 case was properly before Supreme Court on writ of error. Miller v. Schoene, Va. 1928, 48 S.Ct. 246,276 U.S. 272, 72 L. Ed. 568.

In reviewing the judgement of a state court in a case in which it was unsuccessfully contended that a state law deprived a party of rights secured by the Federal Constitution the Federal Supreme Court is concerned not with the characterization or construction of the state law by the state court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in

force by the state. Corn Product Refining Co. v. Eddy, 1919, 39 S.Ct. 325, 249 U.S. 427,63 L. Ed. 689.

The power of the United States Supreme Court to undo conviction in state courts is limited to the enforcement of those fundamental principles of liberty and justice which are secured by U.S.C.A. Const. Amend. 14. McNabb v. U.S., Tenn. 1943,63 S.Ct. 608, 318 U.S. 322,87 L.Ed. 819, rehearing denied 63 S.Ct. 1322, 319 U.S. 784,87 L.Ed. 1727.

Where a right is claimed in a state court arising under a statute of the United States, a question is presented reviewable by the Supreme Court of the United States, Supreme Lodge, etc. v. Knights of Pythias of North America etc., 1912, 59 So. 88, 102 Miss 280.

CONCLUSION

This Honorable Court must take Jurisdiction over this case and deal with it on the merits.

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CERTIFICATE OF SERVICE

I, hereby certify that theree copies were mailed on May 2nd 1985 to the Florida State Attorney's office at Dade County Metro Justice Bldg. 1351 N.W. 12 Street, Miami, Florida.

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